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RECENT IMPORTANT DECISIONS.

ATTACHMENT—PROPERTY IN CUSTODIA LEGIS.—The proceeds of certain property sold in claim and delivery proceedings, were paid to the attorney for the plaintiff, and while still in his possession were sought to be attached as the property of such plaintiff. The latter claimed them to be exempt, as being *in custodia legis,* but *held,* the attachment would lie. *First National Bank* v. *Johnston* (N. C. 1913), 77 S. E. 404.

The general rule is that property *in custodia legis* can not be attached, *Hagan* v. *Lucas,* 10 Pet. 400; *Brewer* v. *Hutton,* 45 W. Va. 106, 72 Am. St. Rep. 804. Money therefore collected under execution while in the hands of the officers collecting it is not subject to levy, *Turner* v. *Fendall,* 1 Cranch 117; *Reddick* v. *Smith,* 4 Ill. (3 Scammon), 451. Likewise money paid into the hands of a clerk on a judgment may not be levied upon, *Ross* v. *Clarke,* 1 Dall. 354; nor is the personal property of an insane person attachable in the hands of the guardian, *Hale* v. *Duncan,* Brayton (Vt.) 132. The reason for the rule lies in the fact that in order to make the levy the attaching officer must lawfully take possession of the goods, and this he can not do if another officer of the court has a special property in them, for the law will not permit one court to assume control over the representative of another court, or over the property confided to his charge, for his possession is the possession of the court, and to interfere with his possession is to invade the jurisdiction of the court itself, *Bailey* v. *Childs,* 46 Oh. St. 557; *Burlingame* v. *Bell,* 16 Mass. 318; *Beers* v. *Place,* 36 Conn. 578; ROOD, GARNISHMENT, § 27. In the principal case the attorney held the property as agent for the plaintiff rather than the court, and therefore it became subject to the attachment as the property of the principal. There is in this connection a distinction to be observed, and indeed some conflict of authority. When the purposes of the court have been fully accomplished in respect to the particular property, and after the person who is entitled to it is ascertained, together with the amount to which he is entitled, and the order has been made for payment, some courts allow the attachment to be had, proceeding on the ground that the custodian then ceases to remain the agent of the court, and becomes instead the agent of the party, *Dunsmoor* v. *Furstenfeldt,* 88 Cal. 522, 12 L. R. A. 508, 22 Am. St. Rep. 331; *Weaver* v. *Davis,* 47 Ill. 235; *Gaither* v. *Ballew,* 49 N. C. 488, 69 Am. Dec. 763; *Boylau* v. *Hines,* 62 W. Va. 486, 125 Am. St. Rep. 983, 13 L. R. A. (N. S.) 757, and note. See also, *In re Shelly,* 24 Del. 10. The preponderance of authority, however, would seem to point in another direction, for it is elementary that it does not rest in the authority of other tribunals to determine the status of a fund or property in the custody of a court, and therefore it is difficult in such case to see upon what principle the attachment would ever be allowed, *Hudson* v. *Saginaw Circuit Judge,* 114 Mich. 116, 68 Am. St. Rep. 465, 47 L. R. A. 345, and note; *In re Forsyth,* 78 Fed. 296; *Curtis* v. *Ford,* 78 Tex. 262, 10 L. R. A. 529; *Sturtevant* v. *Bohn,* 57 Neb. 671; *Field* v. *Jones,* 11 Ga. 413.